SUPREME COURT, U.S.
FILED
01 715 NOV 19 2001
OFFICE OF THE CLERK

No. ___

In the Supreme Court of the United States

MICHAEL H. HOLLAND; WILLIAM P. HOBGOOD; MARTY D. HUDSON; THOMAS O.S. RAND; ELLIOT A. SEGAL; CARL E. VAN HORN; and GAIL R. WILENSKY, as Trustees of the United Mine Workers of America Combined Benefit Fund,
Petitioners,

v.

BELLAIRE CORPORATION; NACCO INDUSTRIES, INC.; and NORTH AMERICAN COAL CORPORATION.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

JOHN R. MOONEY
ELIZABETH A. SAINDON
MOONEY, GREEN, BAKER & SAINDON, P.C.
1920 L Street, N.W., Suite 400
Washington, D.C. 20036
(202) 783-0010

PETER BUSCEMI
Counsel of Record
ANNE BRAFFORD
MORGAN, LEWIS & BOCKIUS LLP
1800 M Street, N.W.
Washington, D.C. 20036
(202) 467-7190

DAVID W. ALLEN
JONATHAN SOKOLOW
Office of the General Counsel
UMWA HEALTH & RETIREMENT FUNDS
2121 K Street, N.W.
Washington, D.C. 20037
(202) 521-2220

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

93 pp

QUESTION PRESENTED

In the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701-9722 and 30 U.S.C. § 1232(h), Congress directed the Social Security Administration to assign each of the retired coal miners and dependents who are beneficiaries of the United Mine Workers of America Combined Benefit Fund to a specific coal operator or related company in accordance with the statutory criteria set forth in Section 9706. The Act provided that the beneficiary assignments "shall" be made before October 1, 1993. SSA completed most, but not all, of the initial assignments by that date.

The question presented, which has been answered in the affirmative by the Fourth Circuit and in the negative by the Sixth Circuit, is whether SSA retained authority to make initial assignments of Combined Fund beneficiaries after September 30, 1993.

PARTIES TO THE PROCEEDINGS

In addition to the parties named in the caption, Larry G. Massanari, Acting Commissioner of Social Security, was a party in the court of appeals. Currently, the Commissioner of Social Security is Jo Anne B. Barnhart.

STATEMENT UNDER RULE 29.1

Under this Court's Rule 29.6, the Trustees of the Combined Fund state that the Combined Fund is not a subsidiary or affiliate of any publicly-owned company.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	1
PARTIES TO THE PROCEEDINGS	II
STATEMENT UNDER RULE 29.1	II
TABLE OF AUTHORITIES	V
OPINIONS BELOW	1
JURISDICTION	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
I. HISTORY OF THE COAL ACT	4
II. STRUCTURE OF THE COAL ACT	7
A. Eligibility For Benefits And Liability Structure	7
B. The Coal Act's Timetable And Interim Funding Scheme	8
C. Funding Benefits For "Orphans"	9
D. Obstacles to SSA's Assignment Process	10
III. PROCEEDINGS BELOW	12
REASONS FOR GRANTING THE PETITION	13
I. THE SIXTH CIRCUIT'S DECISION CONFLICTS WITH THAT OF THE FOURTH CIRCUIT ON THE SAME ISSUE, AND THE SIXTH CIRCUIT'S ERRONEOUS RULING JEOPARDIZES THE PROPER ALLOCATION OF COAL ACT LIABILITY, THE STABILITY OF THE COMBINED FUND, AND THE PUBLIC INTEREST	15

TABLE OF CONTENTS—CONTINUED

	Page
II. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISIONS REGARDING THE EFFECT OF A GOVERNMENT AGENCY'S NONCOMPLIANCE WITH A STATUTORY DATE	20
CONCLUSION	29
APPENDIX A (court of appeals opinion)	1a
APPENDIX B (district court opinion)	3a
APPENDIX C (district court judgment)	13a
APPENDIX D (court of appeals order denying petitions for hearing en banc)	15a
APPENDIX E (text of Coal Act)	16a
APPENDIX F (declaration of Carl F. Tennille)	52a

TABLE OF AUTHORITIES

CASES — Page

Barrick Gold Exploration, Inc. v. Hudson, 47 F.3d 832 (6th Cir. 1995), *cert. denied*, 513 U.S. 813 (1995) 4

Bellaire Corp. v. Shalala, 995 F. Supp. 125 (D.D.C. 1997) 3

Brock v. Pierce County, 476 U.S. 253 (1986) 4, 21, 22, 27

Carbon Fuel Co. v. USX Corp, 100 F.3d 1124 (4th Cir. 1996) 4

Codell Construction Co. v. Apfel, No. 01-5909 (6th Cir. 2001) 17

Davon Inc. v. Shalala, 75 F.3d 1114 (7th Cir. 1996), *cert. denied*, 519 U.S. 808 (1996) 4

Dixie Fuel Co. v. Commissioner of Social Security, 171 F.3d 1052 (6th Cir. 1999) ..... *passim*

Dixie Fuel Co. v. Callahan, Civ. No. 97-373 (E.D. Ky. Jan. 7, 1999) 20

Eastern Enterprises v. Apfel, 524 U.S. 498 (1998) 4, 13, 19, 20, 24

Holland v. Eastover Mining & Duke Energy, Civ. No. 98-636 (E.D. Ky) 17

Holland v. Keenan Trucking Co., 102 F.3d 786 (4th Cir. 1996) 4

Holland v. Pardee Coal Co., Inc., No. 00-1770, __ F.3d __, 2001 WL 1244840 (4th Cir. Oct. 18, 2001) ..... *passim*

Holland v. Pardee Coal Co., Inc., 93 F. Supp. 2d 706 (W.D. Va. 2000) 15

In re Blue Diamond Coal Co. (Blue Diamond Coal Co. v. Shalala), 79 F.3d 516 (6th Cir. 1996), *cert. denied*, 519 U.S. 1055 (1997) 4

In re Chateaugay Corp. (LTV Steel Co. v. Shalala), 53 F.3d 478 (2d Cir. 1995), *cert. denied*, 516 U.S. 913 (1995) 4

TABLE OF AUTHORITIES—Continued

	Page
Lindsey Coal Mining Co. v. Chater, 90 F.3d 688 (3d Cir. 1996)	4
LTV Steel Co. v. Halter (In re LTV Steel Co., Inc.), No. 01-4021 (Bankr. N.D. Ohio)	17
Mead v. Apfel, No. 01-3277 (6th Cir. 2001)	17
Old Ben Coal Co. v. SSA, Civ. No. 01-CV-128 (E.D. Ky)	17
Peabody Coal Co. v. Apfel, No. 00-6239 (6th Cir. June 21, 2001)	17
Regions Hospital v. Shalala, 522 U.S. 448 (1998)	4, 21, 22
Shenango Inc. v. Apfel, Civ. No. 99-1035 (W.D. Pa. July 25, 2000)	12, 14, 18
Sidney Coal Co. v. Massanari, Civ. No. 7:01-CV-76 (E.D. Ky)	17
United States v. James Daniel Good Real Property, 510 U.S. 43 (1993)	4, 21, 22, 25
United States v. Montalvo-Murillo, 495 U.S. 711 (1990)	21, 22
Unity Real Estate Co. v. Holland, 178 F.3d 649 (3d Cir. 1999), *cert. denied*, 528 U.S. 963 (1999)	4
University of Texas v. Camenisch, 451 U.S. 390 (1981)	20
Wyoming Pocohontas v. Apfel, No. 01-3984 (6th Cir. 2001)	17
STATUTES	
28 U.S.C. § 1254	2
28 U.S.C. § 1292	19, 20
Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701-9722	*passim*

TABLE OF AUTHORITIES—Continued

	Page
Employee Retirement Income Security Act, 29 U.S.C. § 1002	2
Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776, 3036-56	6
Labor Management Relation Act, 29 U.S.C. § 186(c)(5)	2
Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§ 1231-1233	9
Supplemental Appropriations Act of 1993, Pub. L. No. 103-50, 1993 U.S.C.C.A.N. (107 Stat. 254)	10
OTHER AUTHORITIES	
138 Cong. Rec. 34,001 (1992)	8, 9
138 Cong. Rec. S10783 (daily ed. July 29, 1992)	14
138 Cong. Rec. S17603-07 (daily ed. Oct. 8, 1992)	26-27
Committee Print, House Committee on Ways and Means, *Financing UMWA Coal Miner "Orphan Retiree" Health Benefits* (Sept. 3, 1993)	11

In the Supreme Court of the United States

No. ___

MICHAEL H. HOLLAND; WILLIAM P. HOBGOOD; MARTY D. HUDSON; THOMAS O.S. RAND; ELLIOT A. SEGAL; CARL E. VAN HORN; and GAIL R. WILENSKY, as Trustees of the United Mine Workers of America Combined Benefit Fund,

Petitioners,

v.

BELLAIRE CORPORATION; NACCO INDUSTRIES, INC.; and NORTH AMERICAN COAL CORPORATION.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

The Trustees of the United Mine Workers of America Combined Benefit Fund, by their undersigned counsel, respectfully petition for a writ of certiorari to review the judgment of the court of appeals in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, 1a-2a) is not officially reported. It is unofficially reported at Nos. 00-4080, 00-4082, 2001 WL 856962 (6th Cir. June 22, 2001). The opinion of the district court (App. B, 3a-12a) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on June 22, 2001. On September 12, 2001, Justice Stevens entered an order extending the time within which to file a petition for a writ of certiorari to and including October 20, 2001. On October 15, 2001, Justice Stevens entered an order further extending the time for filing to and including November 19, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case concerns the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), 26 U.S.C. §§ 9701-9722 and 30 U.S.C. § 1232(h), which is reproduced in Appendix E, 16a-51a.

STATEMENT OF THE CASE

The Coal Act established a statutory system for providing retiree health benefits to more than 100,000 retired coal miners and their survivors and dependents. Petitioners are the Trustees of the United Mine Workers of America Combined Benefit Fund ("Combined Fund"), which is one of two statutory trust funds created under the Coal Act. *See* 26 U.S.C. § 9702(a). The Combined Fund is a multiemployer employee welfare benefit plan within the meaning of Section 3(1) and (37) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(1), (37), and an employee trust fund within the meaning of Section 302(c)(5) of the Labor Management Relations Act, 29 U.S.C. § 186(c)(5).

Under Section 9706(a) of the Coal Act, 26 U.S.C. § 9706(a), the Social Security Administration ("SSA") assigned certain Combined Fund beneficiaries to respondent Bellaire Corporation ("Bellaire"). As a result of SSA's assignments, Bellaire became liable to pay annual health care premiums to the Combined Fund to finance the health care of

the assigned beneficiaries. 26 U.S.C. § 9704(a). Respondents NACCO Industries, Inc. and North American Coal Corp., two companies that are "related" to Bellaire under the statutory definition in 26 U.S.C. § 9701(c)(2)(A), are jointly and severally liable with Bellaire for Bellaire's premiums. *See* 26 U.S.C. § 9704(a).

Almost immediately after enactment of the Coal Act, Bellaire challenged the constitutionality of the statute as applied to it and its related persons. This challenge was unsuccessful, *Bellaire Corp. v. Shalala*, 995 F. Supp. 125, 130-31 (D.D.C. 1997), and Bellaire sought no further review. Before enactment of the Coal Act, Bellaire's participation in the collectively bargained UMWA multiemployer health care system spanned at least four decades. During this period, Bellaire signed several collective bargaining agreements—including the National Bituminous Coal Wage Agreements of 1974, 1978, 1981, and 1984—that referred explicitly to lifetime retiree health benefits. Bellaire's attack on the Coal Act was without merit.

Now, in this new lawsuit, Bellaire seeks to reduce substantially its liability under the statute. Bellaire argues, among other things, that SSA lacked authority to make any initial assignments of Combined Fund beneficiaries after September 30, 1993, and that therefore SSA's assignments of 270 Combined Fund beneficiaries to Bellaire after that date were automatically invalid. Relying on the Sixth Circuit's prior ruling in *Dixie Fuel Co. v. Commissioner of Social Security*, 171 F.3d 1052 (6th Cir. 1999), the district court ruled in Bellaire's favor and entered final judgment on this count of the complaint. (App. C, 13a-14a). SSA and the Trustees, recognizing that *Dixie Fuel* would bind a subsequent panel in the Sixth Circuit, asked the court of appeals to hear their appeal *en banc*. The court of appeals denied the request. (App. D, 15a). The court of appeals' panel then affirmed on the basis of *Dixie Fuel*.

The court of appeals' decisions here and in *Dixie Fuel* are inconsistent with several decisions of this Court regarding whether an agency's failure to meet a statutory date deprives the agency of power to act after that date. *See, e.g., Brock v. Pierce County*, 476 U.S. 253, 260 (1986); *Regions Hospital v. Shalala*, 522 U.S. 448, 460 n.3 (1998); *United States v. James Daniel Good Real Property*, 510 U.S. 43, 63-64 (1993). The Sixth Circuit's rulings also conflict directly with the Fourth Circuit's decision in *Holland v. Pardee Coal Co.*, No. 00-1770, __ F.3d __ , 2001 WL 1244840 (4th Cir. Oct. 18, 2001), which sustained the validity of Combined Fund beneficiary assignments made after September 30, 1993, and expressly rejected the outcome in *Dixie Fuel*. On November 14, 2001, the Fourth Circuit denied a petition for rehearing and rehearing in banc in *Pardee*.

I. HISTORY OF THE COAL ACT

The history of the events leading to enactment of the Coal Act has been reviewed at length by various courts. *Eastern Enterprises v. Apfel*, 524 U.S. 498, 504-15 (1998) (plurality opinion); *Unity Real Estate Co. v. Holland*, 178 F.3d 649 (3d Cir.), *cert. denied*, 528 U.S. 963 (1999); *In re Blue Diamond Coal Co.* (*Blue Diamond Coal Co. v. Shalala*), 79 F.3d 516 (6th Cir. 1996), *cert. denied*, 519 U.S. 1055 (1997); *Lindsey Coal Mining Co. v. Chater*, 90 F.3d 688 (3d Cir. 1996); *Holland v. Keenan Trucking Co.*, 102 F.3d 786 (4th Cir. 1996); *Carbon Fuel Co. v. USX Corp.*, 100 F.3d 1124 (4th Cir. 1996); *Davon Inc. v. Shalala*, 75 F.3d 1114 (7th Cir.), *cert. denied*, 519 U.S. 808 (1996); *In re Chateaugay Corp.* (*LTV Steel Co. v. Shalala*), 53 F.3d 478 (2d Cir.), *cert. denied*, 516 U.S. 913 (1995); *Barrick Gold Exploration, Inc. v. Hudson*, 47 F.3d 832 (6th Cir.), *cert. denied*, 513 U.S. 813 (1995). We summarize here only the essential features of the Coal Act related to Bellaire's liability.

The coal industry, and health care for retired coal miners, have been subject to extensive government intervention and

regulation for the last 50 years. Since the government's seizure of the nation's coal mines, and its entry into the historic Krug-Lewis Agreement in 1946, retiree health benefits have been provided through a series of multi-employer health plans established pursuant to successive collective bargaining agreements known as National Bituminous Coal Wage Agreements ("NBCWAs"). The United Mine Workers of America ("UMWA") and the Bituminous Coal Operators' Association, Inc. ("BCOA") have negotiated these agreements since 1951. The NBCWAs provided for the funding of health benefits for retirees through levies assessed against the coal operators on the basis of the amount of coal mined or the number of covered hours worked under a particular collective bargaining agreement. These levies were paid into a series of trust funds established by the NBCWAs over the years (the "UMWA Plans"). By their nature as multiemployer trusts, the UMWA Plans continued to provide benefits to eligible retirees even if the former employers of such retirees went out of business or otherwise stopped paying into the Plans. The participating coal operators that remained financed the benefits of these so-called "orphan" retirees.

By the late 1980s, the UMWA Plans were in financial trouble. As health care costs increased, coal operators in increasing numbers exited the coal industry and "dumped" their retirees into the UMWA Plans, where their benefits would be funded by those operators still mining coal. As the number of coal operators contributing to the UMWA Plans decreased, fewer and fewer operators were left to carry the burden of rapidly rising health care costs, not only for their own retirees but also for thousands of retirees with whom none of the remaining contributing operators had ever had any employment relationship. As a result, the continued viability of the UMWA multiemployer health care system was cast in serious doubt.

In 1989, the UMWA led a ten-month strike against the Pittston Coal Company, a major coal producer. The dispute centered on the funding of health benefits for retired coal miners and their dependents. Pittston refused to contribute to the multiemployer benefit funds and cut off health benefits to retirees in its individual company plans. In October 1989, legislation was introduced to address this problem. While Congress deliberated and collective bargaining failed to resolve the dispute, Secretary of Labor Dole intervened and established the Coal Commission, an industry-wide commission charged with analyzing the retiree health care crisis and recommending solutions to assure the long-term viability of the multiemployer health care system.

On November 5, 1990, the Coal Commission issued its Report, and stressed that any proposed solution must ensure the continuation of retiree health benefits. The Commission explained that the collective bargaining process—limited as it was to companies still mining coal—was inadequate to provide a long-term solution. Accordingly, the Commission recommended that Congress enact legislation to address the problem.

Following the Coal Commission's Report, Congress undertook its own intensive examination of the crisis. Its deliberations resulted in passage of an earlier version of the Coal Act on March 20, 1992; this version was passed, however, as part of more extensive tax legislation, which was vetoed by President Bush. The expiration of the NBCWA of 1988, scheduled for February 1993, loomed on the horizon. Congress revisited and revised the prior bill, and the Coal Act in its final form was enacted in October 1992, as part of the Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776, 3036-56. Within the Coal Act itself, Congress explicitly set forth its finding that:

> it is necessary to modify the private health care benefit plan structure for retirees in the coal industry to identify

> persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

26 U.S.C. § 9701 (historical note). Congress further stated that the policy of the Coal Act was:

> to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry . . . [and] to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans.

Id.

II. STRUCTURE OF THE COAL ACT

A. Eligibility For Benefits And Liability Structure

The Coal Act provides that persons eligible to receive benefits from the Combined Fund are those persons who, as of July 20, 1992, were eligible to receive, and were receiving, benefits from either of the two then-existing collectively bargained UMWA health care plans—the UMWA 1950 Benefit Plan and the UMWA 1974 Benefit Plan. 26 U.S.C. § 9703(f). To finance the Combined Fund, Congress apportioned liability to coal operators on a "pay for your own" basis. Under this principle, coal operators, like Bellaire, that previously had contributed voluntarily to the UMWA Plans pursuant to the terms of their collective bargaining agreements are required to pay for the care of their own former employees and their dependents.

Congress specified the criteria under which particular Combined Fund beneficiaries were to be assigned to particular former employers or their related persons. In Section 9706(a) of the Coal Act, Congress directed SSA to assign Combined Fund beneficiaries to signatory operators and related persons according to a statutorily prescribed

system of priorities. 26 U.S.C. § 9706(a). This liability scheme reflects Congress' determination that all coal operators, including Bellaire, that had employed the retirees in question, "and thereby benefited from their services, [should] be assigned responsibility for providing the health care benefits promised in their various collective bargaining agreements." *See* 138 Cong. Rec. 34,001 (1992).

B. The Coal Act's Timetable And Interim Funding Scheme

Congress outlined a timetable for implementing the Coal Act's funding scheme. It directed that the UMWA 1950 Benefit Plan and the UMWA 1974 Benefit Plan be merged into the Combined Fund as of February 1, 1993 (the termination date of the 1988 NBCWA). 26 U.S.C. § 9702(a)(2). The Combined Fund began at that time to provide health and death benefits to surviving coal industry retirees and their dependents. 26 U.S.C. § 9703(b)(4). This launched the Combined Fund's first "plan year," which was the eight-month period from February 1 to September 30, 1993. Each succeeding plan year begins on October 1 and ends on the following September 30. 26 U.S.C. § 9702(c).

Congress provided an interim funding system for the Combined Fund's first plan year, while SSA carried out the assignment process. *See* 26 U.S.C. § 9704(i)(1)(A), § 9705(a) (providing that benefits for the first plan year would be funded initially by a $70 million transfer from the UMWA 1950 Pension Plan and interim contributions from 1988 agreement operators). The interim funding period was to end with the beginning of the Combined Fund's second plan year on October 1, 1993. Congress directed SSA to assign Combined Fund beneficiaries to specific former employers before October 1, 1993, and Congress anticipated that the Combined Fund could then use those beneficiary assignments as a basis for sending out premium assessments, for the Combined Fund's first and second plan years, to

assigned operators. Congress further provided that the 1988 agreement operators would receive a credit against their premium assessments in the amount of their interim contributions during the first plan year. *See* 26 U.S.C. § 9704(i)(D). The statutory schedule thus reflected both Congress' goal of having a new benefits system in place by the time of the termination of the 1988 NBCWA on February 1, 1993, and the impossibility of completing the beneficiary assignment process between the Coal Act's October 24, 1992 enactment date and the date in February 1993 when the Combined Fund would need to begin providing benefits.

C. Funding Benefits For "Orphans"

Congress also adopted a method of providing for "orphan" beneficiaries in the Combined Fund (*i.e.*, Combined Fund beneficiaries whose former employers are no longer in business and who could not be assigned under the criteria in Section 9706 of the Coal Act). *See* 138 Cong. Rec. 34,001 (1992) (reproducing proposed conference report). To help alleviate the financial burden of health care for such beneficiaries, Congress authorized transfers of substantial sums to the Combined Fund from the UMWA 1950 Pension Plan and from the Abandoned Mine Reclamation Fund (the "AML Fund") established under the Surface Mining Control and Reclamation Act of 1977. 26 U.S.C. § 9705; 30 U.S.C. § 1232(h). Congress provided that, on the first day of each of the Combined Fund's first three plan years, a $70 million transfer would be made from the UMWA 1950 Pension Plan to the Combined Fund. 26 U.S.C. § 9705(a). These funds, totaling $210 million, would be used in large part to defray the cost of health care for unassigned beneficiaries. 26 U.S.C. § 9705(a)(3)(B). Thereafter, for Combined Fund plan years beginning on and after October 1, 1995, Congress provided for annual transfers to the Combined Fund from the AML Fund. 26 U.S.C. § 9705(b). These transfers, which are

limited by the amount of annual interest earned by the AML Fund or $70 million (whichever is greater), can be used only to defray the expense of providing health benefits to unassigned beneficiaries, and the amount transferred cannot exceed the amount necessary to cover these expenses.

Apart from the transfers described in the preceding paragraph, any remaining unassigned beneficiary premiums for orphan retirees and their dependents are to be shared on a proportionate basis by the employers that have been assigned Combined Fund beneficiaries under the criteria set forth in Section 9706(a). 26 U.S.C. § 9704(d). The unassigned beneficiaries premiums are to be allocated among signatory operators on the basis of their pro rata share of the beneficiaries that have been assigned. *Id.* Thus, the more beneficiaries an operator is assigned, the greater its share of the total unassigned beneficiaries premiums.

D. Obstacles To SSA's Assignment Process

Once the Coal Act became law, SSA was charged with the massive responsibility of identifying and locating former employers for more than 100,000 beneficiaries, and unraveling the corporate relationships between employers and potentially related companies, so as to implement the assignment criteria set forth in Section 9706(a). Despite the magnitude of the task, no funds were appropriated for SSA to commence its assignment work until July 13, 1993.[1] This was less than 80 days before October 1, 1993, the date by which SSA was to have assigned Combined Fund beneficiaries to the appropriate former employers. In early September 1993, the House Committee on Ways and Means was aware that SSA would not complete the initial assignments by October 1, 1993:

---

[1] Supplemental Appropriations Act of 1993, H.R. 2118, Pub. L. No. 103-50, Ch. V, 139 Cong. Rec. D. 765.

> SSA anticipated that checking the [employment] records would be very time consuming. Most beneficiaries are associated with the 1950 Benefit Fund, and therefore with miners who retired before 1976. Social security records are not computerized for work history prior to 1978. Linking an individual's work history to a specific employer will thus require searching through microfilm records and entering the information by hand into the computer system. *Preliminary estimates by the SSA suggest that it would take approximately 150 work years just to retrieve the microfilm records. This does not include the additional work involved in determining the assignment to an employer. On a routine basis, SSA has 140 technicians specially trained to work with the microfilm records, which are difficult to decipher. Extra resources would be needed to complete the assignments by the October 1, 1993 target date.*

Committee Print, House Committee on Ways and Means, *Financing UMWA Coal Miner "Orphan Retiree" Health Benefits*, at 64-65 (Sept. 3, 1993) (emphasis supplied). Congress provided no extra resources to expedite the initial assignment process. There is no indication, however, that Congress believed that any initial assignments of Combined Fund beneficiaries made on or after October 1, 1993 would be automatically void, and that the liability scheme envisioned in the Coal Act would be substantially altered by treating as "unassigned" thousands of beneficiaries who properly could be assigned according to the statutory criteria.

Because of Congress' delayed funding and SSA's limited resources, approximately 10,000 initial assignments of beneficiaries were made on or after October 1, 1993. At the time of the proceedings below, these assignments accounted for approximately $112 million in premiums that had been assessed to the 247 operators who received such assignments. App. F, 52a-54a (Declaration of Carl F. Tennille, Comptroller

of UMWA Health and Retirement Funds).[2] The Combined Fund had collected approximately $105 million of this amount, an amount that presumably would need to be refunded if all assignments made on or after October 1, 1993 were void. *Id.*

III. PROCEEDINGS BELOW

In June 1999, Bellaire filed a six-count complaint against SSA, challenging the assignment of Combined Fund beneficiaries on various grounds. Among Bellaire's claims was its contention that, under the Coal Act, the 270 beneficiaries that SSA initially assigned to Bellaire on or after October 1, 1993 were improperly assigned and must remain permanently unassigned. According to Bellaire, Section 9706(a)'s statement that SSA "shall" make assignments "before October 1, 1993" established a jurisdictional deadline after which SSA no longer was authorized to make initial beneficiary assignments to signatory operators.

Bellaire's argument was based on the Sixth Circuit's earlier decision in *Dixie Fuel*. The Sixth Circuit there held that SSA had no continuing power to make initial assignments of Combined Fund beneficiaries to signatory operators on or after October 1, 1993. The court reasoned that the word "shall" in Section 9706(a) unambiguously expressed Congress' intent that SSA complete all initial assignments before October 1, 1993, and that the Coal Act's entire scheme for assigning beneficiaries and financing the Combined Fund confirmed this interpretation. 171 F.3d at 1062-63. The

---

[2] The Declaration of Carl F. Tennille, dated November 18, 1999, originally was prepared and filed in *Shenango, Inc. v. Apfel*, Civ. No. 99-1035 (W.D. Pa.), another case raising the *Dixie Fuel* issue. In the present case, the same Declaration was attached to the Trustees' Memorandum in Opposition to Plaintiffs' Joint Motion for Preliminary Injunction, Partial Summary Judgment and Final Judgment, filed June 22, 2000.

ruling in *Dixie Fuel* had no practical effect on the parties in that case, and indeed, as we explain in greater detail below, it appears clear that the court of appeals lacked jurisdiction to render its decision. Among other things, all of Dixie Fuel's beneficiary assignments had been declared void on other grounds before the court of appeals ruled. *Id.* at 1056 (stating that SSA conceded that the assignments at issue were void under *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998)).

On April 5, 2000, Bellaire moved for preliminary and permanent injunctive relief, partial summary judgment, and for the entry of final judgment on its *Dixie Fuel* claim.[3] Based entirely on *Dixie Fuel*, the district court entered judgment in favor of Bellaire. It directed the Trustees to provide Bellaire with a credit in the amount of the total premiums previously paid for the 270 beneficiaries at issue. App. B, 7a. The court of appeals affirmed in reliance on *Dixie Fuel*. App. A, 2a (*Dixie Fuel* controlled "until and unless 'an inconsistent decision of the United States Supreme Court requires modification of the decision or [the Sixth Circuit] sitting en banc overrules the prior decision.'").

REASONS FOR GRANTING THE PETITION

The Fourth and Sixth Circuits have reached opposing conclusions on the question of whether SSA retained authority to make initial assignments of Combined Fund beneficiaries on or after October 1, 1993. The Fourth Circuit answered in the affirmative, the Sixth Circuit in the negative. The same issue currently is pending in the Third Circuit in a case in which the district court also rejected *Dixie Fuel*.

---

[3] The April 5, 2000 motion was filed only against SSA because the district court had not yet granted the Trustees' motion to intervene as party-defendants, a motion that Bellaire opposed. After the district court granted the Trustees' motion to intervene, Bellaire filed a motion against the Trustees that was in all other material respects identical to the one filed against SSA on April 5, 2000.

Shenango, Inc. v. Apfel, No. 00-2525 (3d Cir. argued Sept. 19, 2001). The Fourth Circuit's decision is in accord with this Court's prior rulings regarding the efficacy of agency action after a statutorily prescribed date; the Sixth Circuit's rulings are contrary to that authority. This Court should resolve the conflict, to stem coal operators' rush to the Sixth Circuit to avoid Coal Act liability and to ensure that the statutory funding scheme works as intended.

The issue in conflict in the Fourth and Sixth Circuits has significant implications for the uniform operation of the Coal Act's national benefits system. Approximately 10,000 Combined Fund beneficiaries—nearly 10% of the Combined Fund's initial beneficiary population—are potentially affected. This is an even larger number of beneficiaries than the number whose assignments were affected by this Court's constitutional ruling in *Eastern Enterprises*. After *Dixie Fuel*, numerous assigned operators (including the plaintiffs in this case) filed actions in the Sixth Circuit to take advantage of the court of appeals' erroneous ruling. If this Court does not grant review, that trend will continue and intensify, with serious negative consequences for the Coal Act's statutory scheme.

As explained above, Congress sought in the Coal Act to assign as many Combined Fund beneficiaries as possible to signatory operators and their related persons. Congress sought to keep the number of unassigned beneficiaries to an absolute minimum. The Coal Act's financing structure was carefully considered and extensively debated. As Senator Rockefeller said, "[t]he approach of the current legislation was not lightly arrived at. Lengthy and difficult negotiations were required because of the myriad of conflicting interests in our nationwide coal industry." 138 Cong. Rec. S10783 (daily ed. July 29, 1992). Notwithstanding this carefully devised financing structure, and solely as a result of SSA's "lateness," the court of appeals' rulings in this case and in *Dixie Fuel*

compel a massive transfer of Coal Act liability away from those employers who should properly bear it. The court reached this conclusion in *Dixie Fuel* without any consideration of the views of the Combined Fund, which was not a party to that case, and contrary to the teachings of this Court in other cases involving statutorily prescribed dates for agency action.

Intervention by this Court regarding the proper standards for determining whether a government agency loses authority to act if it does not meet a statutory date will have a salutary effect beyond this case. Although government agencies strive to meet the statutory dates set by Congress, they sometimes do not. The question presented here is important because a *Dixie Fuel*-like rule, if generally applied, would invite a barrage of lawsuits any time government agencies were late in carrying out their statutory duties.

I. THE SIXTH CIRCUIT'S DECISION CONFLICTS WITH THAT OF THE FOURTH CIRCUIT ON THE SAME ISSUE, AND THE SIXTH CIRCUIT'S ERRONEOUS RULING JEOPARDIZES THE PROPER ALLOCATION OF COAL ACT LIABILITY, THE STABILITY OF THE COMBINED FUND, AND THE PUBLIC INTEREST.

The court of appeals' decision in this case, which relied entirely on *Dixie Fuel*, is in direct conflict with *Holland v. Pardee Coal Co.*, No. 00-1770, __ F.3d __, 2001 WL 1244840 (4th Cir. Oct. 18, 2001). The district court in *Pardee*, relying primarily on *Dixie Fuel*, held that SSA's initial assignments made after September 30, 1993 were invalid. 93 F. Supp. 2d 706, 716 (W.D. Va. 2000). The Fourth Circuit reversed, in a detailed opinion. That decision is correct and, unlike *Dixie Fuel*, resolves the issue of SSA's jurisdiction in a manner best calculated to do the will of Congress.

As this issue was litigated in the courts below, and as the case comes to this Court, Bellaire does not dispute that it is the signatory operator to which the 270 Combined Fund beneficiaries at issue should have been assigned under the Coal Act's criteria. Nonetheless, because these beneficiaries were assigned to Bellaire after September 30, 1993, and because they had not previously been assigned to any other operator, Bellaire seeks a windfall of several million dollars. Bellaire contends that it should be permanently relieved of responsibility for these retirees and dependents solely because of the date on which the assignments were made. On that basis, Bellaire seeks to shift the cost of financing the health care of these beneficiaries either to the AML Fund or to the entire group of assigned operators, all of whom have a lesser employment connection to these beneficiaries than Bellaire. *See Pardee*, 2001 WL 1244840, at *9 (stating that *Dixie Fuel* "creates a financial windfall to certain coal operators, at the expense of other operators (whose assignments were completed before October 1, 1993), and, more importantly, the public interest").

If the court of appeals ruling is permitted to stand, an increased amount will be needed from the AML Fund to help defray the health care expenses of the increased number of unassigned beneficiaries. These funds then will not be available for other uses, either to defray health care costs for Combined Fund beneficiaries who are truly unassigned or to reclaim abandoned mine lands, which was the original purpose for the AML Fund. Relying on the AML Fund to finance health care for beneficiaries who are assignable to Bellaire is inconsistent with the Coal Act's purpose of stabilizing funding of a *private* health care benefit plan. *See Pardee*, 2001 WL 1244840, at *9. Moreover, it is not in the public interest needlessly to shift funds away from reclamation projects designed to restore mine lands and thus protect the public health and safety. *Id.* at *9 & n.19 ("The magnitude of the nation's reclamation needs is alarming. It is

estimated that over $2.6 billion of coal-related health, safety, property and general welfare problems remain to be rectified").[4]

Although the number of affected beneficiaries here is significant, this is only one case. Like Bellaire, other coal operators have flocked to the Sixth Circuit to challenge their assignments under *Dixie Fuel*. A total of more than 2,000 Combined Fund beneficiary assignments are at stake in cases currently pending within the Sixth Circuit, including *Mead v. Apfel*, No. 01-3277 (6th Cir. 2001); *Codell Construction Co. v. Apfel*, No. 01-5909 (6th Cir. 2001); *Wyoming Pocohontas v. Apfel*, No. 01-3984 (6th Cir. 2001); *Holland v. Eastover Mining & Duke Energy*, Civ. No. 98-636 (E.D. Ky.); *LTV Steel Co. v. Halter* (*In re LTV Steel Co., Inc.*), No. 01-4021 (Bankr. N.D. Ohio); *Sidney Coal Co. v. Massanari*, Civ. No. 7:01-CV-76 (E.D. Ky.); *Old Ben Coal Co. v. SSA*, Civ. No. 01-CV-128 (E.D. Ky.). In addition, the Commissioner of Social Security is considering whether to petition for a writ of certiorari in *Peabody Coal Co. v. Apfel*, No. 00-6239 (6th Cir. June 21, 2001), in which the Sixth Circuit voided 607 assignments under *Dixie Fuel*. If the *Dixie Fuel* decision were to be applied across the board, it would alter the assignments of approximately 10,000 of the Combined Fund's 109,000 beneficiaries as of February 1, 1993. At the time of the district court proceedings below, these 10,000 assignments accounted for approximately $112 million in premiums that had been billed to the 247 operators who

---

[4] Although mortality had reduced the Combined Fund's beneficiary population to approximately 60,000 as of the time of the proceedings below, annual per beneficiary health care costs have increased at a rate comparable to the rate at which the Combined Fund's beneficiary population has declined. As a result, it is unlikely that the Combined Fund's total health care costs will decrease significantly in the near future, and thus reduce the risk of depleting the AML Fund.

received such assignments. Now, after two more annual assessments of health premiums by the Combined Fund, that number is substantially higher.

Because many coal operators are present in the Sixth Circuit, and because in any event the Combined Fund and SSA are amenable to suit there, it is entirely predictable that, if this Court were to deny review, additional *Dixie Fuel* actions would be filed in district courts in the Sixth Circuit. Those courts, of course, would be constrained to follow *Dixie Fuel*. Moreover, absent intervention by this Court, the judgments in this and other pending cases would become final, and review in another case at a later date, even if this Court were then to conclude that *Dixie Fuel* was wrongly decided, would raise difficult questions about whether (and for which years) beneficiary assignments already declared invalid in final judgments could be reinstated.

Given the state of the law in the Sixth Circuit, other courts of appeals are unlikely to have an opportunity to rule on the issue presented here. The Fourth Circuit was presented with the issue in *Pardee* rather fortuitously. After Pardee failed to pay assessed Combined Fund premiums for several beneficiaries, the Trustees filed a collection action in the Western District of Virginia. While that case was pending, the Sixth Circuit decided *Dixie Fuel*. Pardee then amended its answer to add the defense that, with respect to two of the retired miners at issue in the Trustees' collection action, SSA's beneficiary assignments were invalid because they were made after September 30, 1993. Likewise, in *Shenango*, the case currently under submission after oral argument in the Third Circuit, the *Dixie Fuel* issue was added after the Sixth Circuit's decision, in a case originally filed on other grounds entirely. After the Fourth Circuit's ruling in *Pardee*, it is reasonable to expect that other employers seeking to benefit

from *Dixie Fuel* will concentrate their litigation efforts in the Sixth Circuit. Accordingly, the issue presented here is not one that can await further percolation in the courts of appeals.

In view of *Dixie Fuel*'s procedural posture, the non-involvement of the Combined Fund, and the inadequate record before the court of appeals, *Dixie Fuel* is a particularly inappropriate precedent to control such a significant issue in the administration of a major federal statute. The Sixth Circuit decided *Dixie Fuel* without the benefit of any information regarding the practical dimensions of the problem or the historical background that led to SSA's inability to complete the initial beneficiary assignments before October 1, 1993. The court of appeals did not know, for example, that SSA had assigned approximately 10,000 beneficiaries, accounting for more than $100 million in premiums, on or after October 1, 1993, and that voiding the assignments would result in a massive transfer of liability from clearly responsible parties to wholly unrelated entities.

Even more important, the court of appeals in *Dixie Fuel* lacked jurisdiction, for two separate reasons. The case came to the court of appeals under 28 U.S.C. § 1292 (a)(1), on plaintiff's appeal from the district court's denial of its motion for a preliminary injunction. By the time the court of appeals heard the case, however, the preliminary injunction motion had become moot. This Court had decided *Eastern Enterprises v. Apfel,* 524 U.S. 498 (1998), and, on the basis of that decision, SSA notified Dixie Fuel that all of its beneficiary assignments were void (for reasons having nothing to do with the date on which the assignments were made). Accordingly, Dixie Fuel's preliminary injunction motion—and the appeal from the denial of that motion—were moot, because neither the government nor the Combined Fund was seeking to collect any premiums from Dixie Fuel or otherwise to impose any Coal Act obligations against the company. As a consequence, Dixie Fuel was not threatened with any harm,

irreparable or otherwise, during the pendency of the litigation. Under these circumstances, the court of appeals' appellate jurisdiction under Section 1292(a)(1) was nonexistent. *University of Texas v. Camenisch*, 451 U.S. 390 (1981).

Moreover, before the court of appeals decided the case, Dixie Fuel moved for, and the district court granted, *final judgment* for Dixie Fuel as a matter of law, as a result of *Eastern Enterprises* and the voiding of Dixie Fuel's beneficiary assignments. *Dixie Fuel Co. v. Callahan*, No. 97-373 (E.D. Ky. Jan. 7, 1999). SSA, the only defendant in the case, did not appeal. Thus, the entire case had been concluded for some time when, in late March 1999, the court of appeals decided the appeal from the denial of a preliminary injunction. By that time, not only had the preliminary injunction motion become moot, but the entire case was over, and there was no case or controversy left for the Sixth Circuit to decide. Though the court's decision has generated extensive litigation (including this case), with a huge potential impact on the Combined Fund and the Coal Act's allocation of liability, it had no effect whatsoever on Dixie Fuel itself, whose assignments already had been voided.

II. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISIONS REGARDING THE EFFECT OF A GOVERNMENT AGENCY'S NONCOMPLIANCE WITH A STATUTORY DATE.

The court of appeals in *Dixie Fuel* acted as if the question of SSA's authority to make initial assignments of Combined Fund beneficiaries after September 30, 1993 was resolved by the statutory provision that assignments "shall" be made before October 1, 1993. 171 F.3d at 1061-63. To the contrary, however, the statutory date set forth in the Coal Act merely raises, but does not answer, the question presented here. There is no doubt that Congress wanted all initial assignments of Combined Fund beneficiaries to be made

before October 1, 1993. There is also no doubt that Congress wanted Combined Fund beneficiaries to be assigned according to the criteria set forth in Section 9706(a) of the statute, and that Congress wanted as many Combined Fund beneficiaries as possible to be assigned to specific former employers, so that the number of unassigned beneficiaries could be kept to a minimum. The question then becomes: what should happen if SSA fails in some cases to meet the statutory date? Should Congress be denied not only its intended schedule but also its intended assignment scheme? Does SSA lose its authority to act after the statutorily prescribed date?

The statute does not expressly address this question at all. Nothing in the Coal Act states that beneficiaries who were not assigned before October 1, 1993 should be treated as forever unassigned; nothing says that agency failure to complete all initial assignments before October 1, 1993 should lead to a permanent expansion of the number of unassigned beneficiaries. The statute does *not* say that no assignments may be made after September 30, 1993, and it does *not* say that any beneficiaries not assigned before October 1, 1993 must remain unassigned. Nor does the statute provide any reason to believe that Congress would *prefer* that assignments not made before October 1, 1993 not be made at all.

On several occasions, this Court has addressed the practical consequences of an agency failure to meet a statutory date. *See, e.g., Regions Hospital v. Shalala*, 522 U.S. 448, 460 n.3 (1998); *United States v. James Daniel Good Real Property*, 510 U.S. 43, 64 (1993); *United States v. Montalvo-Murillo*, 495 U.S. 711, 718 (1990); *Brock v. Pierce County*, 476 U.S. 253, 260 (1986). The Sixth Circuit in *Dixie Fuel* devoted far too little attention to this line of authority. It did not refer at all to *Regions Hospital*, *James Daniel Good*, and *Montalvo-Murillo*, and it cited *Brock* only in passing.

Although the court of appeals refused to recognize the point, this Court has held repeatedly that, even when Congress uses mandatory language such as "shall," a government agency's failure to comply with a statutory date does not ordinarily divest it of the power to act after that date. *Regions Hosp.*, 522 U.S. at 460 n.3 ("The Secretary's failure to meet the deadline, a not uncommon occurrence when heavy loads are thrust on administrators, does not mean that official lacked power to act beyond it."); *James Daniel Good*, 510 U.S. at 63 ("many statutory requisitions intended for the guide of officers in the conduct of business devolved upon them do not limit their power or render its exercise in disregard of the requisitions ineffectual") (citations and internal quotations omitted); *Montalvo-Murillo*, 495 U.S. at 718 ("Although the duty is mandatory, the sanction for breach is not loss of all later powers to act."); *Brock*, 476 U.S. at 262 ("the mere use of the word 'shall' . . . standing alone, is not enough to remove the [government agency's] power to act after" the statutory date).

In *James Daniel Good*, for example, this Court ruled that, when a statute "does not specify a consequence of noncompliance with statutory timing provisions, the federal courts will not in the ordinary course impose their own coercive sanction." 510 U.S. at 63. In other words, unless Congress explicitly prescribes specific consequences that are to follow from the agency's failure to meet a statutory date, courts ordinarily will not strip the agency of the power to act after that date. This is what the Fourth Circuit held in *Pardee*, relying on the foregoing authority from this Court: "[S]tatutory provisions imposing a mandatory duty on an agency to act before a specific date are not generally construed to remove the agency's power to act after that date." 2001 WL 1244840, at *4.

This Court's analyses in *Regions Hospital* and *James Daniel Good* are fully applicable here. What would Congress have anticipated if SSA did not complete the initial assign-

ments by October 1, 1993? Leaving beneficiaries permanently unassigned? Or completing the statutorily prescribed assignment task as promptly as practicable? Notwithstanding *Dixie Fuel*'s statement to the contrary, Congress did not unambiguously speak to these issues by specifying a consequence for SSA's noncompliance with the statutory date. The court of appeals in *Dixie Fuel* concluded that any beneficiary not assigned before October 1, 1993 could be treated as unassigned and could have his or her health care financed in the same manner as all other unassigned beneficiaries, *i.e.*, through the annual transfers described in Section 9705 and the unassigned beneficiaries premium authorized in Section 9704(d). 171 F.3d at 1063. The real question, though, is whether Congress intended the "consequence" identified by *Dixie Fuel*. There is no evidence that it did.

The purpose of the October 1, 1993 date was to spur SSA to make assignments promptly so that the Combined Fund could assess health care premiums at the beginning of its second plan year and thus secure a steady flow of monthly premium payments after the conclusion of the statutory interim funding arrangements for the first plan year. Although Congress wanted the assignments to be completed by October 1, 1993, that does not mean that SSA's power to act was terminated after that date.

The court of appeals in *Dixie Fuel* apparently thought that SSA's failure to make some assignments by the statutory date would somehow prevent the Coal Act from functioning as intended unless the beneficiaries involved were treated as permanently unassigned. That is not so. Not only is there no requirement in the statute that assignments be fixed forever by October 1, 1993, but the statutory scheme is just to the contrary. The statute expressly permits administrative challenges to SSA's beneficiary assignments, and it also expressly authorizes SSA to reassign beneficiaries whose

initial assignments are found to be in error as a result of that process. 26 U.S.C. § 9706(f)(2), (3). The statute itself thus shows that assignments can be changed and that beneficiaries can become newly unassigned after October 1, 1993. The Sixth Circuit recognized as much in *Dixie Fuel*. 171 F.3d at 1061. Beneficiaries also can become newly unassigned if their assigned operators (and any related persons) no longer satisfy the Coal Act's "in business" definition, or as a result of judicial decisions such as this Court's ruling in *Eastern*. As a consequence of that decision, SSA decided that several thousand Combined Fund beneficiary assignments were void, because the assigned operators were, for purposes of the Coal Act, identically situated to Eastern. SSA was able to reassign some of the beneficiaries whose assignments were declared void as a result of *Eastern*, and others remained permanently unassigned. The Trustees of the Combined Fund then raised the premium assessments for the Fund's first three plan years, and they increased billings to the AML Fund for subsequent plan years, to take account of the increased number of unassigned beneficiaries. The statutory scheme thus makes clear that the number of assigned and unassigned beneficiaries need not have been, and in fact was not, permanently fixed by October 1, 1993.

The Coal Act's express provision for administrative review of assignments and possible reassignment of affected beneficiaries is relevant for a further reason as well. It demonstrates that, if SSA even remotely could have anticipated the outcome in *Dixie Fuel*, the entire issue here could have been avoided through a rather simple expedient. If SSA, realizing by September 30, 1993 that it could not complete the assignment process by that day, had simply assigned *all* not-yet-assigned beneficiaries to coal company X or Y or Z, these assignments then could have been reviewed at a later date and the appropriate corrections could have been made. The Fourth Circuit acknowledged this point and found that it militated against the outcome in *Dixie Fuel*. *Pardee*, 2001

WL 1244840, at *7 n.15 ("[D]epriving the SSA of its power to make beneficiary assignments on or after October 1, 1993, would have presented the agency with a perverse incentive to make a timely 'rough cut,' and then refine its assignments through the administrative review process."). As the Fourth Circuit explained:

> In effect, Pardee's position, and the district court's ruling, would allow the SSA to reassign those beneficiaries who were initially assigned to the wrong operator, yet forbid the "reassignment" of beneficiaries who were initially assigned to no operator. We cannot accept that Congress intended the allocation of liability to rest on such a hollow distinction.

2001 WL 1244840, at *7.

The incongruity identified in *Pardee* is not counterbalanced by any attempt in *Dixie Fuel* or by Bellaire to offer a rational reason why Congress would adopt a statutory scheme that made such "hollow distinctions." The Coal Act shows that Congress wanted the beneficiaries at issue here to be assigned to Bellaire, and it wanted those assignments to be made by October 1, 1993. Because SSA did not complete the assignments by the specified date, both of these objectives cannot be fulfilled. The question is, therefore, would Congress prefer to have signatory operators avoid their intended assignments because the statutory schedule was not met, or would Congress prefer to have the assignments at issue go to the correct employer, even if not as promptly as Congress would have liked. The text, legislative history, and purpose of the Coal Act show that Congress would have preferred the latter alternative to the former, and nothing in the text of the statute precludes that result. *See James Daniel Good*, 510 U.S. at 65 ("It would make little sense to interpret directives designed to ensure the expeditious collection of revenues in a way that renders the Government unable, in some circumstances, to obtain its revenues at all.").

In fact, *Dixie Fuel*'s conflicting conclusion is demonstrably at odds with congressional intent. The Senate's proposed conference report for the Coal Act and attachments show that Congress intended "unassigned beneficiaries" to mean only orphans. Provision after provision of the report reflects the Coal Act's fundamental principle that employers should pay for the health care of their own former employees and that "unassigned" beneficiaries are those not assignable under the statutory criteria. For example, the report states:

> The conferees intend that the largest possible number of beneficiaries in the Plans be assigned to a specific or designated company. Under the statute, each eligible beneficiary shall be assigned in the following order . . . . Finally, if no operator remains in business under the formulations described above, that retiree becomes an unassigned beneficiary.

138 Cong. Rec. S17604-05 (daily ed. Oct. 8, 1992)

The report continues:

> As a practical matter, not all beneficiaries can be assigned to a specific last signatory operator, related person or assigned operator for payment purposes. This is because in some instances, none of those persons remain in business, even as defined to include non-mining related businesses. Thus, provisions are made for unassigned beneficiary premiums.

Id. at S17605.

> The essence of the Conference Agreement is that those companies which employed the retirees in question, and thereby benefited from their services, will be assigned responsibility for providing health care benefits promised in their various collective bargaining agreements. This will be accomplished through a formulation designed to allocate the greatest number of beneficiaries in the Plans to a prior responsible operator.

138 Cong. Rec. S17603 (daily ed. Oct. 8, 1992).

> The Conference Agreement's overriding purpose is to find and designate a specific obligor for as many beneficiaries in the Plans as possible.

138 Cong. Rec. S17604 (daily ed. Oct. 8, 1992).

> The Conference Report's purpose is to assure that any beneficiary, once assigned, remains the responsibility of a particular operator, and that the number of unassigned beneficiaries is kept to an absolute minimum.

138 Cong. Rec. S17605 (daily ed. Oct. 8, 1992).

It would be very odd indeed if Congress had implemented its intent to link beneficiaries to the most responsible operator and to minimize unassigned beneficiaries by cutting off SSA's authority to make assignments as of October 1, 1993, which was less than 80 days after SSA received funding from Congress to commence the assignment work. *See Brock*, 476 U.S. at 264-65.

In contrast, the legislative history relating to the October 1, 1993 date is unremarkable. *Pardee*, 2001 WL 124880, at *8 ("Although the legislative history indicates that October 1, 1993, was the date by which 'assigned operator allocations . . . are required to be made,' the paucity of references to this 'dead-line' is conspicuous and compelling.") (citation omitted); *see, e.g.*, 138 Cong. Rec. S17605 (daily ed. Oct. 8, 1992) (proposed conference report) ("In the first plan year the Secretary of HHS will review the work history of each beneficiary and will prepare the assigned operator allocations which are required to be made by October 1, 1993."). Nothing indicates that SSA's failure to meet the statutory date deprives it of the authority to make assignments after that date. Nor is there any suggestion of any policy reason why Congress would choose to adopt such a rule. "Conspicuously absent" from the Coal Act's text and legislative history "is any reference to the possibility that the [October 1, 1993] provision might convey rights on" the signatory operators. *See Brock*, 476 U.S. at 264. Neither the language nor the

legislative history of the Coal Act suggests that Congress was concerned with repose or mathematical certainty for the signatory operators.

Further, there is not a hint in *Dixie Fuel* that any assigned operator is even remotely prejudiced by the date of the assignments at issue. By hypothesis, these beneficiaries *should have been* assigned under the statute to the former employers identified by SSA. If SSA had made the assignments before October 1, 1993, the employers would have been asked to pay the exact same amount that they are being asked to pay today. The *only* reason why these employers are seeking to be absolved of liability is that SSA made its determination "too late." This is an extraordinary case of allowing the scheduling tail to wag the statutory dog, a result that the Fourth Circuit could not condone:

> Our examination of the Coal Act's legislative history convinces us that Congress intended the status of individual beneficiaries to depend not on the vicissitudes of bureaucratic action, but instead on the merits, *i.e.*, whether an extant operator could be identified and held responsible. It is apparent that a central objective of the Act is to assign retired coal miners and their dependents to their respective employers whenever such a match is possible, and to allocate liability accordingly. This objective corresponds closely to the Act's genesis and policy underpinnings—and, crucially, to its funding scheme.

Pardee, 2001 WL 1244840, at *9. To protect this liability scheme intended by Congress, the stability of the Combined Fund, and the public interest in preserving the AML Fund, review should be granted to overturn the decision below and the *Dixie Fuel* precedent on which it rests.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN R. MOONEY
ELIZABETH A. SAINDON
MOONEY, GREEN, BAKER
& SAINDON, P.C.
1920 L Street, N.W., Suite 400
Washington, D.C. 20036
(202) 783-0010

DAVID W. ALLEN
JONATHAN SOKOLOW
Office of the General Counsel
UMWA HEALTH & RETIREMENT
FUNDS
2121 K Street, N.W.
Washington, D.C. 20037
(202) 521-2220

PETER BUSCEMI
Counsel of Record
ANNE BRAFFORD
MORGAN, LEWIS & BOCKIUS LLP
1800 M Street, N.W.
Washington, D.C. 20036
(202) 467-7190

November 19, 2001